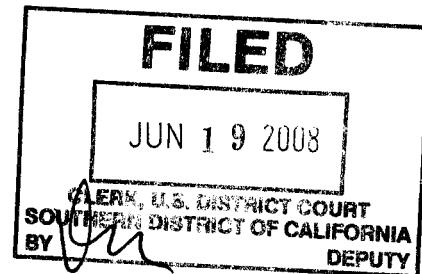


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 12 UNITED STATES OF AMERICA

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

08 CR 2063-WQH

15 UNITED STATES OF AMERICA,	16 }	17 Magistrate Case No. 08MJ1781
18 Plaintiff,	19 }	20 STIPULATION OF FACT AND JOINT
21 v.	22 }	23 MOTION FOR RELEASE OF
24 TULIO ESPINOZA-	25 }	26 MATERIAL WITNESS(ES) AND
25 DE LOS MONTEROS (4),	26 }	27 ORDER THEREON
27 Defendant.	28 }	29 (Pre-Indictment Fast-Track Program)

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1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
 2 provide the signed, original plea agreement to the Government not later than five business days
 3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
 5 before **July 10, 2008**.

6 4. The material witnesses, Angel Perez-Bailon and Jose Hernandez-Ortiz, in this case:

7 a. Are aliens with no lawful right to enter or remain in the United States;
 8 b. Entered or attempted to enter the United States illegally on or about
 9 June 6, 2008;

10 c. Were found in an area 50 yards North of the international border with Mexico

11 and were being guided by codefendant Jorge Rene Bernal-Guzman, ~~while the defendant was driving~~
 12 ~~discovered in the United States defendant was going to transport them in the vehicle,~~
~~the second load vehicle~~, and defendant knew of the fact that they were aliens with no lawful right
 13 to enter or remain in the United States;

14 d. Were paying or having others pay on their behalf an unknown amount up to
 15 \$2,000 to others to be brought into the United States illegally and/or transported illegally to their
 16 destination therein; and,

17 e. May be released and remanded immediately to the Department of Homeland
 18 Security for return to their country of origin.

19 5. After the material witnesses are ordered released by the Court pursuant to this
 20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
 21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
 22 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

23 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
 24 substantive evidence;

25 b. The United States may elicit hearsay testimony from arresting agents
 26 regarding any statements made by the material witness(es) provided in discovery, and such testimony
 27 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest

1 of (an) unavailable witness(es); and,

2 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
 3 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
 4 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
 5 waives the right to confront and cross-examine the material witness(es) in this case.

6 6. By signing this stipulation and joint motion, defendant certifies that defendant has
 7 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
 8 further that defendant has discussed the terms of this stipulation and joint motion with defense
 9 counsel and fully understands its meaning and effect.

10 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
 11 immediate release and remand of the above-named material witness(es) to the Department of
 12 Homeland Security for return to their country of origin.

13 It is STIPULATED AND AGREED this date.

14 Respectfully submitted,

15 KAREN P. HEWITT
 16 United States Attorney

17 Dated: 6/19/08.


 for JAMES P. MELENDRS
 Assistant United States Attorney

18 Dated: 6/19/08.


 JODI D. THORP
 Defense Counsel for
TULIO ESPINOZA-DE LOS MONTEROS

19 Dated: 6/19/08.


TULIO ESPINOZA-DE LOS MONTEROS
 Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,
THE STIPULATION is admitted into evidence, and,
IT IS ORDERED that the above-named material witness(es) be released and remanded
forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 6/19/2009


United States Magistrate Judge